

**Introduced by Senator Pan**

February 26, 2015

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An act to repeal and add Section 53084.5 of the Government Code, relating to local government.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 533, as introduced, Pan. Cities and counties: sales and use tax agreements.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law. That law provides that for the purpose of a local sales tax adopted pursuant to that law, all retail sales are consummated at the place of business of the retailer unless otherwise specified.

Existing law prohibits a local agency, as defined to mean all cities and counties, from entering into any form of agreement with any other person that would involve the payment, transfer, diversion, or rebate of any amount of Bradley-Burns local tax proceeds for any purpose if the agreement results in a reduction in the amount of revenue that is received by another local agency from a retailer that is located within the territorial jurisdiction of that other local agency, and the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency, with specified exceptions, including an exception for an agreement to pay or rebate any Bradley-Burns local tax revenue relating to a buying company, as defined.

This bill would repeal that prohibition and instead prohibit, on or after January 1, 2016, a local agency from entering into any form of agreement that would result, directly or indirectly, in the payment,

transfer, diversion, or rebate of Bradley-Burns local tax proceeds to any person, as defined, for any purpose, if the agreement results in a reduction in the amount of Bradley-Burns tax proceeds that, in the absence of the agreement, would be received by another local agency and the retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency, with specified exceptions. This bill would also impose specified notification and reporting requirements on a local agency entering into an agreement that results in a reduction of the amount of Bradley-Burns tax proceeds, that in the absence of the agreement, would be received by another local agency, prior to the ratification of that agreement. This bill would also require any local agency to post such an agreement on its Internet Web site the local agency has entered into, including any agreements entered into prior to the effective date of this bill that are still in effect. By imposing these notification and reporting requirements on a local agency, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 53084.5 of the Government Code is
- 2 repealed.
- 3 ~~53084.5.—(a) On or after the date the act adding this section~~
- 4 ~~takes effect, a local agency shall not enter into any form of~~
- 5 ~~agreement that would result, directly or indirectly, in the payment,~~
- 6 ~~transfer, diversion, or rebate of any tax revenue resulting from the~~
- 7 ~~imposition of a sales and use tax under the Bradley-Burns Uniform~~
- 8 ~~Local Sales and Use Tax Law (Part 1.5 (commencing with Section~~
- 9 ~~7200) of Division 2 of the Revenue and Taxation Code) to any~~
- 10 ~~person for any purpose when both of the following apply:~~
- 11 ~~(1) The agreement results in a reduction in the amount of~~
- 12 ~~revenue that is received by another local agency from a retailer~~

1 that is located within the territorial jurisdiction of that other local  
2 agency from the tax proceeds collected under the Bradley-Burns  
3 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
4 with Section 7200) of Division 2 of the Revenue and Taxation  
5 Code). This subdivision shall not apply to a reduction in the use  
6 tax proceeds that are distributed to that other local agency through  
7 one or more countywide pools.

8 (2) ~~The retailer continues to maintain a physical presence within~~  
9 ~~the territorial jurisdiction of that other local agency. This~~  
10 ~~subdivision shall not apply if the retailer has expanded its~~  
11 ~~operations into another jurisdiction with the result that the retailer~~  
12 ~~is conducting a comparable operation within the jurisdiction of~~  
13 ~~both local agencies.~~

14 (b) ~~For the purposes of this section, the following definitions~~  
15 ~~have the following meanings:~~

16 (1) ~~“Local agency” means a chartered or general law city, a~~  
17 ~~chartered or general law county, or a city and county.~~

18 (2) ~~“Retailer” means a retailer as defined by Section 6015 of~~  
19 ~~the Revenue and Taxation Code.~~

20 (3) ~~“Physical presence” means the lease or ownership of any~~  
21 ~~real property for the purpose of carrying on business operations.~~

22 (e) ~~This section shall not apply to local tax proceeds provided~~  
23 ~~by a local agency to a retailer if the funds are used to reimburse~~  
24 ~~the retailer for the construction of public works improvements that~~  
25 ~~serve all or a portion of the territorial jurisdiction of the local~~  
26 ~~agency.~~

27 (d) ~~This section shall not apply to an agreement to pay or rebate~~  
28 ~~any tax revenue resulting from the imposition of a sales and use~~  
29 ~~tax under the Bradley-Burns Uniform Local Sales and Use Tax~~  
30 ~~Law (Part 1.5 (commencing with Section 7200) of Division 2 of~~  
31 ~~the Revenue and Taxation Code) relating to a buying company.~~  
32 ~~“Buying company” means, and is limited to, a legal entity that is~~  
33 ~~separate from another legal entity that owns, controls, or is~~  
34 ~~otherwise related to, the buying company and which has been~~  
35 ~~created for the purpose of performing administrative functions,~~  
36 ~~including acquiring goods and services for the other entity, as~~  
37 ~~defined by the State Board of Equalization, and meets requirements~~  
38 ~~of a buying company under Sections 6066 to 6075, inclusive, of~~  
39 ~~the Revenue and Taxation Code, and the regulations adopted~~  
40 ~~pursuant to those sections.~~

~~(e) This section shall not apply to any agreement by a local agency to pay or rebate any use tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) relating to a use tax direct payment permit issued under Section 7051.3 of the Revenue and Taxation Code.~~

~~(f) Nothing in this section shall be interpreted to limit the ability of a local agency to contract with or otherwise enter into an agreement pursuant to subdivision (b) of Section 7056 of the Revenue and Taxation Code.~~

SEC. 2. Section 53084.5 is added to the Government Code, to read:

53084.5. (a) On or after January 1, 2016, a local agency shall not enter into any form of agreement that would result, directly or indirectly, in the payment, transfer, diversion, or rebate of any tax revenue resulting from the imposition of a sales and use tax under the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code) to any person for any purpose when both of the following apply:

(1) The agreement results in a reduction in the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency.

(2) The retailer continues to maintain a physical presence within the territorial jurisdiction of that other local agency.

(b) (1) A local agency entering into an agreement that results in a reduction of the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency shall post the proposed agreement on its Internet Web site for at least 30 days prior to ratification or approval of that agreement by its governing body.

(2) A local agency entering into an agreement that results in a reduction of the amount of revenue under the Bradley-Burns Uniform Local Sales and Use Tax Law that, in the absence of the agreement, would be received by another local agency shall notify the other local agency by certified mail addressed to the attention of the chief executive of that other local agency at least 60 days

1 prior to ratification or approval of that agreement by its governing  
2 body.

3 (3) A local agency shall post any agreement on its Internet Web  
4 site it has entered into that results in a reduction of the amount of  
5 revenue under the Bradley-Burns Uniform Local Sales and Use  
6 Tax Law that, in the absence of the agreement, would be received  
7 by another local agency, including any agreements entered into  
8 prior to the effective date of this section that are still in effect.

9 (c) For the purposes of this section, the following definitions  
10 have the following meanings:

11 (1) “Local agency” means a chartered or general law city, a  
12 chartered or general law county, or a city and county, of this state.

13 (2) “Person” means a person as defined in Section 6005 of the  
14 Revenue and Taxation Code.

15 (3) “Physical presence” means the lease or ownership of any  
16 real property for the purpose of carrying on business operations.

17 (4) “Retailer” means a retailer as defined by Section 6015 of  
18 the Revenue and Taxation Code.

19 (d) This section shall not apply to any agreement by a local  
20 agency to pay or rebate any use tax revenue resulting from the  
21 imposition of a use tax under the Bradley-Burns Uniform Local  
22 Sales and Use Tax Law relating to a use tax direct payment permit  
23 issued under Section 7051.3 of the Revenue and Taxation Code.

24 (e) Nothing in this section shall be interpreted to limit the ability  
25 of a local agency to contract with or otherwise enter into an  
26 agreement pursuant to subdivision (b) of Section 7056 of the  
27 Revenue and Taxation Code.

28 SEC. 3. If the Commission on State Mandates determines that  
29 this act contains costs mandated by the state, reimbursement to  
30 local agencies and school districts for those costs shall be made  
31 pursuant to Part 7 (commencing with Section 17500) of Division  
32 4 of Title 2 of the Government Code.